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CERTIFICATE OF MAILING PURSUANT TO 37 C.F.R. §1.8

whereby certify that this correspondence and attached documents pursuant to 37 C.F.R. §1.8, are being deposited with the United States Postal Service as first class mail to Examiner Backer in an envelope addressed to:
Mail Stop Non-Fee Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on:

Date:

May 21, 2004

By:

Gilda V. Sposta
Signature of person depositing U.S. Mail

**IN THE UNITED STATES PATENT AND
TRADEMARK OFFICE**

UTILITY PATENT

Applicants: O'Brien

Attorney Docket No.: 60655.3500

Serial No.: 09/706,194

Group Art Unit: 2175

Filed: November 30, 2000

Examiner: Samuel G. Rimell

Title: **COMPUTER SYSTEM AND METHOD
FOR DETERMINING A TRAVEL
SCHEME MINIMIZING TRAVEL
COSTS FOR AN ORGANIZATION**

Confirmation No.: 5463

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MAY 28 2004

Technology Center 2100

RESPONSE under 37 C.F.R. 1.111

Mail Stop Non-Fee Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the Office Action dated March 23, 2004, the applicant makes the following response to the Request for Information on the 37 C.F.R. Section 1.105:

1. The litigation referred to in the "Notice of Pending Litigation", dated November 3, 2000 is not pending.
2. A copy of the following orders and opinions produced by the presiding judge of record in the above-mentioned litigation are included with this Response:
 - a. Order signed on May 29, 2003 by Chief Judge Paul R. Matia ordering final judgment to be entered in favor of defendant on plaintiff's patent infringement claim and granting summary judgment to defendant on its

first counterclaim for declaratory judgment of noninfringement and dismissing as moot defendant's counterclaim for declaration of patent invalidity; summary judgment granted in favor of plaintiff on defendant's counterclaims for commercial disparagement and defamation and for intentional interference with business relations. Defendant's counterclaim for unfair competition is dismissed without prejudice as it is a state cause of action and the court exercises discretion to decline the hearing remaining pendant state claim.

- b. Judgment Entry signed by Chief Judge Paul R. Matia on May 30, 2003. The Report and Recommendation of the Magistrate Judge is affirmed in part and rejected in part. Defendant's motion for summary judgment is granted as to plaintiff's patent infringement claim and on its first counterclaim for declaratory judgment of noninfringement upon the ground that there is no genuine issues as to any material fact. Judgment is for the defendant as a matter of law as to these claims. Defendants counterclaim for declaratory judgment of invalidity is dismissed as moot.
- c. Memorandum of Opinion and Order denying Defendant's Motion for attorney fees dated September 8, 2003; Costs are denied at this time.
- d. Numerous other orders relating to the above-mentioned litigation.

CONCLUSION

Should the Examiner wish to discuss any of the above in greater detail, then the Examiner is invited to contact the undersigned at the Examiner's convenience.

Respectfully submitted,

Date: 21-May-2004

By: David O. Caplan

David O. Caplan
Reg. No. 41,655

SNELL & WILMER, L.L.P.
One Arizona Center
400 East Van Buren
Phoenix, AZ 85004-2202
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Email: dcaplan@swlaw.com

✓
172 or 174



Jan
FILED
00 JUL 20 AM 10:18
CLERK OF COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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MAY 28 2004

Technology Center 2100

ROSENBLUTH INTERNATIONAL, INC.)	CASE NO. 1: 00 CV 0738
)	
Plaintiff)	
	)	JUDGE LESLEY WELLS
-vs-)	
)	
TRAVEL ANALYTICS, INC.	)	<u>ORDER GRANTING MOTION TO</u>
	)	<u>APPEAR PRO HAC VICE</u>
Defendant)	

This case is before the Court on a motion for the admission of Joel S. Goldhammer, pro hac vice.

Upon consideration, the motion is granted. Mr. Goldhammer is admitted pro hac vice so that he may participate as counsel to plaintiff Rosenbluth International, Inc. in this matter. Lawyers who practice before this Court must be familiar with the Local Rules of the United States District Court for the Northern District of Ohio.

IT IS SO ORDERED.

Lesley Wells
UNITED STATES DISTRICT JUDGE



[Handwritten signature]

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CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

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MAY 28 2004

Technology Center 2100

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROSENBLUTH INTERNATIONAL, INC.	)	CASE NO. 1: 00 CV 0738
)	
Plaintiff)	
	)	JUDGE LESLEY WELLS
-vs-)	
)	
TRAVEL ANALYTICS, INC.	)	<u>ORDER NUNC PRO TUNC TO 26 JULY</u>
	)	<u>2000 (SECRETARIAL ERROR)</u>
Defendant)	

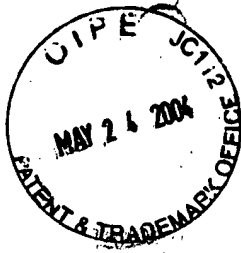
On 26 July 2000, a case management order was issued setting the discovery deadlines in this case. That order incorrectly states that expert reports regarding issues for which a party carries the burden of proof are due on 18 June 2001. However, the date should read 18 May 2001.

Therefore, pursuant to Rule 60(a) of the Federal Rules of Civil Procedure, the 26 July 2000 case management order is corrected nunc pro tunc. Expert reports regarding issues for which a party carries the burden of proof are due on 18 May 2001.

IT IS SO ORDERED.

[Signature: Lesley Wells]
UNITED STATES DISTRICT JUDGE

Read 9-1-00 gja



00 OCT 12 PM 4:01

CLERK OF COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

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MAY 28 2004

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION


Technology Center 2100

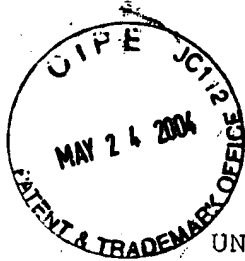
ROSENBLUTH INTERNATIONAL, INC.	)	CASE NO. 1: 00 CV 0738
)	
Plaintiff	)	JUDGE LESLEY WELLS
)	
-vs-)	
	)	<u>ORDER REFERRING CASE TO</u>
TRAVEL ANALYTICS, INC.	)	<u>MAGISTRATE JUDGE JACK B.</u>
	)	<u>STREEPY REGARDING DISCOVERY</u>
Defendant	)	<u>DISPUTE</u>

Counsel for plaintiff Rosenbluth International, Inc. has filed a certificate of a discovery dispute pursuant to Local Rule 37.1.

This case is referred to United States Magistrate Judge Jack B. Streepy for the limited purpose of resolving the discovery dispute pursuant to the procedures of Local Rule 37.1.

IT IS SO ORDERED.


UNITED STATES DISTRICT JUDGE



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MAY 28 2004

Technology Center 2100

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF
EASTERN DIVISION

ROSENBLUTH INTERNATIONAL,
INC.

Plaintiff

v.

TRAVEL ANALYTICS, INC.,
et al.

Defendants

1:00CV738

JUDGE LESLEY WELLS
(Magistrate Judge Jack B. Streepy)

PRETRIAL ORDER


STREEPY, MAG. J.

A telephone pretrial was held on November 29, 2000. As a result of that pretrial the following order is entered.

The parties are unable to agree on a protective order regarding who, on behalf of the plaintiff, can view certain alleged confidential material of the defendant. Accordingly, the parties shall file simultaneous briefs on the issue on December 7, 2000.

IT IS SO ORDERED.

Dated: November 30, 2000


Jack B. Streepy
United States Magistrate Judge

ISSUED

NOV 30 2000



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
DEC 15 PM 1:13
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROSENBLUTH INTERNATIONAL,
INC.

1:00CV738

Plaintiff

JUDGE LESLEY WELLS

(Magistrate Judge Jacob Streepy)

v.

RECEIVED

TRAVEL ANALYTICS, INC.

MAY 28 2004

Defendant

Technology Center 2100

MEMORANDUM AND ORDER

STREEPY, MAG. J.

Rosenbluth International, Inc. (Rosenbluth), filed this action against Travel Analytics, Inc. (Analytics) alleging it infringed a patent owned by Rosenbluth, U.S. Patent No. 5,832,453 ('453) titled "Computer System and Method for Determining a Travel Scheme Minimizing Travel Costs for an Organizations." (Plaintiff's exhibit, PX, 1, attached to Doc. 55.) The complaint alleges that certain software of Analytics, titled "Tango," infringes the '453 patent.

The issue presented for decision herein is whether a protective order should permit "select employees" of Rosenbluth to have access to Analytics' confidential, technical information related to Tango. Analytics seeks to restrict its confidential Tango information to Rosenbluth's attorney and any outside expert who might be retained by Rosenbluth.

Rosenbluth raises two issues: (1) Analytics agreed to a protective order which did not restrict access by Rosenbluth employees to the Tango information, and (2) there is no one available, other than Rosenbluth employees, who has the expertise

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necessary to understand the Tango information sufficient to compare it with the claims of the '453 patent.

Regarding the first issue, the parties have not yet signed a stipulated protective order. Thus there are no provisions of any protective order available for this court to apply to the dispute.

Concerning the second issue, Rosenbluth states it is necessary that "select employees" of Rosenbluth have access to the Tango information. It does not otherwise identify the employees. Rosenbluth has submitted the declaration of Michael Boulton (Boulton), vice president of supplier relations for Rosenbluth who is "familiar" with Rosenbluth's product which is the subject of the '453 patent. He states that in order to comprehend and evaluate the relevant information "one must not only have an in-depth knowledge of the underlying programming but must also have extensive knowledge of the complex structure and operation of travel carriers and their relationships with organizations requiring travel services." (PX 8 at ¶4.) Boulton further states he is "unaware of any individual, other than employees of" Rosenbluth (as well as the inventor of the '453 patent and potentially employees of competitors of Rosenbluth) "who would have sufficient knowledge in this arcane technology to be capable of evaluating the technical information at issue." (*Id.* at 5.)

Analytics makes the following claims: (1) there are significant reasons to suspect that Rosenbluth filed this litigation for improper purposes and without a reasonable basis to believe that Analytics had infringed the '453 patent, and (2) Rosenbluth's employees do not need access to the Tango information.

Regarding the first claim, Analytics has not submitted any evidence that would establish the allegation. Thus, it is not relevant to the issue.

Regarding the second claim, Analytics has retained two outside experts who have analyzed and compared the '453 patent and Tango information. (Defendant's exhibits, DX, C, D.) Both experts essentially state they had no trouble making the comparison and arriving at the opinion that Tango does not infringe patent '453. Analytics argues that in view of the fact it had no difficulty in finding outside experts, Rosenbluth should have no difficulty in doing so.

The following factors are generally applicable to whether any expert (in-house or outside) should be permitted to view confidential information received from another party: (1) what is the employment position of the expert with the receiving party; (2) what is the extent of the expert's regular employment with the receiving party; (3) what is the present involvement of the expert in the receiving party's competitive decisions; (4) what is the likelihood of future involvement of the expert in the receiving party's competitive decisions; and (5) will the expert be willing to forego future involvement with the receiving party if granted access to confidential information. Ares-Serono, Inc. v. Organon Int'l B.V., 153 F.R.D. 4, 6 (D. Mass. 1993). Case law generally limits production of such information to truly independent experts, i.e., those who have no employment or other association with either party. Digital Equipment Corp. v. Micro Tech Inc., 142 F.R.D. 488, 491 (D. Colo. 1992); Safe Light Instrument Corp.

v. Sundstrand Data Control, Inc., 682 F.Supp. 20, 23 (D. Del. 1988).

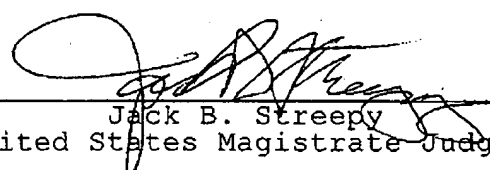
The Boulton declaration is not sufficient to counter the fact that Analytics has hired two outside experts who, looking at their reports, had no difficulty comparing patent '453 to Tango. Since Rosenbluth has failed to show there are no outside experts which it could retain, the general rule, noted above, applies.

To summarize, the protective order being negotiated by the parties will limit access to the Tango information of Analytics to Rosenbluth's attorneys and outside experts. It shall not permit access by Rosenbluth employees.

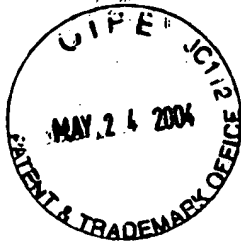
IT IS SO ORDERED.

Dated:

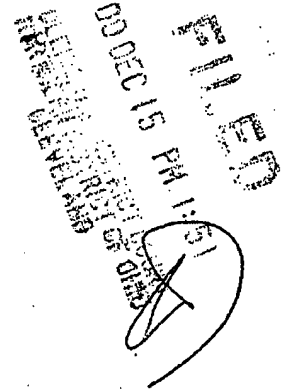
December 15, 2000



Jack B. Streepy
United States Magistrate Judge



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION



ROSENBLUTH INTERNATIONAL,) 1:00CV738
)
Plaintiff) JUDGE LESLEY WELLS
) (Magistrate Judge Jack B. Streepy)
v.)
)
TRAVEL ANALYTICS, INC.)
)
Defendant)

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MAY 28 2004

Technology Center 2100

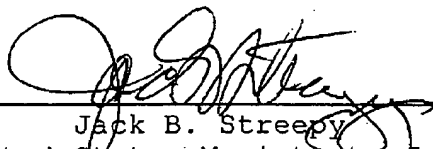
ORDER

STREEPY, MAG. J.

The above matter was referred by the court for a report and recommended decision, a pretrial hearing, or other preliminary matters. This matter has now been concluded, therefore;

IT IS ORDERED that the case referral order is hereby terminated, and the case is returned to the referring judge.

Dated: December 15, 2004


Jack B. Streepy
United States Magistrate Judge

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NORTHERN DISTRICT OF OHIO
CLEVELAND

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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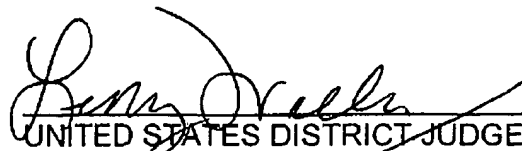
Technology Center 2100

ROSENBLUTH INTERNATIONAL, INC.)	CASE NO. 1: 00 CV 0738
)	
Plaintiff)	
	)	JUDGE LESLEY WELLS
-vs-)	
)	
TRAVEL ANALYTICS, INC.	)	<u>ORDER REGARDING AMENDED</u>
	)	<u>SCHEDULE</u>
Defendant)	

On 18 December 2000, this Court granted the parties' joint motion to continue the exchange of claim charts and the Markman hearing. Counsel were ordered to confer regarding acceptable dates and to submit to the Court a proposed amended scheduling order. On 26 December 2001, the parties complied by filing a document entitled "Joint Report Regarding Amended Scheduling Order" which sets forth agreed amendments to the original scheduling order. (Docket No. 29).

The parties' proposed scheduling order is approved. In addition, the status conference previously scheduled for 18 April 2001 is hereby re-scheduled for 17 July 2001 at 9:30 a.m.

IT IS SO ORDERED.


UNITED STATES DISTRICT JUDGE

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U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROSENBLUTH INTERNATIONAL, INC.	)	CASE NO. 1: 00 CV 738
)	
Plaintiff	)	JUDGE LESLEY WELLS
)	
-vs-)	
	)	<u>ORDER REFERRING CASE TO</u>
TRAVEL ANALYTICS, INC.	)	<u>MAGISTRATE JUDGE STREEPY</u>
	)	<u>REGARDING DISCOVERY DISPUTE</u>
Defendant)	

A discovery dispute has been certified to the Court by a letter from defendant's counsel pursuant to Local Rule 37.1.

This case is referred to United States Magistrate Judge Jack B. Streepy for the limited purpose of resolving the discovery dispute pursuant to the procedures of Local Rule 37.1.

IT IS SO ORDERED.


UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROSENBLUTH INTERNATIONAL,
INC.

Plaintiff

v.

TRAVEL ANALYTICS, INC.,

Defendant

1:00CV738

JUDGE LESLIE WELLS

(Magistrate Judge Jack B. Streepy)

FILED
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

01 MAR -8 PM 3:14

ORDER

STREEPY, MAG. J.

The above matter was referred by the court for a report and recommended decision, a pretrial hearing, or other preliminary matters. This matter has now been concluded (see doc. 34), therefore;

IT IS ORDERED that the case referral order is hereby terminated, and the case is returned to the referring judge.

Dated: March 8, 2001

Jack B. Streepy
United States Magistrate Judge

01 MAR 22 PM 1:11
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROSENBLUTH INTERNATIONAL, INC.

Plaintiff

-vs-

TRAVEL ANALYTICS, INC.

Defendant

) CASE NO. 1:00 CV 738

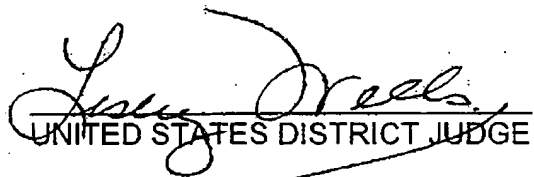
) JUDGE LESLEY WELLS

) ORDER GRANTING MOTION FOR
) EXTENSION OF TIME

This case is before the Court on the parties' joint motion for extension of time in which to file their claim chart.

The motion is granted.

IT IS SO ORDERED.


UNITED STATES DISTRICT JUDGE

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01 APR 00 PM 5:43

CLERK OF COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROSENBLUTH INTERNATIONAL, INC.	)	CASE NO. 1: 00 CV 0738
)	
Plaintiff)	
	)	JUDGE LESLEY WELLS
-vs-)	
)	
TRAVEL ANALYTICS, INC.	)	<u>ORDER REGARDING MARKMAN</u>
	)	<u>HEARING</u>
Defendant)	

This case is scheduled for a Markman hearing on 21 May 2001 at 9:30 a.m., before Judge Lesley Wells, in Courtroom 342, United States Court House, 201 Superior Avenue, N.E., Cleveland, Ohio. Each side's presentation shall not exceed one hour, including opening and closing statements, if any.

IT IS SO ORDERED.

[Handwritten signature: Lesley Wells]
UNITED STATES DISTRICT JUDGE

David. KA

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01 MAY 18 PM 4:22
CLERK OF COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROSENBLUTH INTERNATIONAL, INC.	)	CASE NO. 1: 00 CV 0738
)	
Plaintiff)	
	)	JUDGE LESLEY WELLS
-vs-)	
)	
TRAVEL ANALYTICS, INC.	)	<u>ORDER</u>
)	
Defendant)	

This case is before the Court on defendant Travel Analytics, Inc.'s motion to file a corrected claim construction brief. (Docket No. 43). The motion is granted.

IT IS SO ORDERED.

[Handwritten signature]
UNITED STATES DISTRICT JUDGE

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Confirmation Report - Memory Send

Time : 05-18-01 04:17pm
Tel line : +2165227081
Name : JUDGE WELLS

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End time : 05-18 04:17pm
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Status : OK

Job number : 866

*** SEND SUCCESSFUL ***

JUDGE LESLEY WELLS
UNITED STATES DISTRICT COURT
201 SUPERIOR AVENUE
CLEVELAND, OHIO 44114
PHONE: (216) 522-0792 FAX: (216) 522-7081

FACSIMILE

DATE: 5/18
TO: Michael Grunz
FAX NO.: 241-2824
FROM: Lyur

TOTAL PAGES INCLUDING COVER SHEET: 2

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Status : OK

Job number : 865

*** SEND SUCCESSFUL ***

JUDGE LESLEY WELLS
UNITED STATES DISTRICT COURT
201 SUPERIOR AVENUE
CLEVELAND, OHIO 44114
PHONE: (216) 522-0792 FAX: (216) 522-7081

FACSIMILE

DATE: 5/18
TO: TOM SHANK
FAX NO.: 696-0740
FROM: LYNN

TOTAL PAGES INCLUDING COVER SHEET: 2

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Status : OK

Job number : 864

*** SEND SUCCESSFUL ***

JUDGE LESLEY WELLS
UNITED STATES DISTRICT COURT
201 SUPERIOR AVENUE
CLEVELAND, OHIO 44114
PHONE: (216) 522-0792 FAX: (216) 522-7081

FACSIMILE

DATE: 5/18
TO: DEBRA COLEMAN
FAX NO.: 241-2824
FROM: LYNN

TOTAL PAGES INCLUDING COVER SHEET: 2

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*** SEND SUCCESSFUL ***

JUDGE LESLEY WELLS
UNITED STATES DISTRICT COURT
201 SUPERIOR AVENUE
CLEVELAND, OHIO 44114
PHONE: (216) 522-0792 FAX: (216) 522-7081

FACSIMILE

DATE: 5/18
TO: BRUCE BAUMGARTNER
FAX NO.: 696-0740
FROM: LYNN

TOTAL PAGES INCLUDING COVER SHEET: _____

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CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROSENBLUTH INTERNATIONAL, INC.	)	CASE NO. 1: 00 CV 738
)	
Plaintiff	)	JUDGE LESLEY WELLS
)	
-vs-)	
)	
TRAVEL ANALYTICS, INC.	)	<u>ORDER</u>
)	
Defendant)	

This case came on for a Markman hearing on 21 May 2001 at 9:30 a.m. During the hearing, counsel for the parties indicated the positions set forth in their briefs had, in some ways, changed since the briefs were first submitted. The parties thus agreed to offer only expert testimony during the hearing and to present oral argument at a later date.

Therefore, the Markman hearing shall be continued to 15 June 2001 at 9:30 a.m. Each party shall be limited to a thirty minute presentation. On or before 8 June 2001, the parties shall file with the Court a revised joint claim construction chart.

IT IS SO ORDERED.

Lesley Wells
UNITED STATES DISTRICT JUDGE

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01 JUN 19 01 5:57

COURT OF CLERKS
NORTHERN DISTRICT OF OHIO
CLEVELAND

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROSENBLUTH INTERNATIONAL, INC.	)	CASE NO. 1: 00 CV 0738
)	
Plaintiff)	
	)	JUDGE LESLEY WELLS
-vs-)	
)	
TRAVEL ANALYTICS, INC.	)	<u>ORDER GRANTING MOTION FOR</u>
	)	<u>EXTENSION OF TIME</u>
Defendant)	

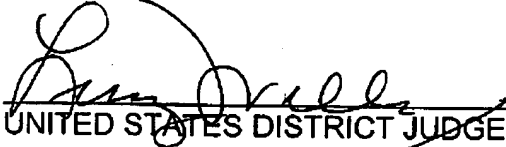
This case came on for a Markman hearing on 15 June 2001. Following the hearing, the parties made an oral motion for extension of time in which to complete discovery and to file dispositive motions. The oral motion is granted, and the parties shall adhere to the following schedule:

- Any dispositive motions shall be filed within thirty (30) days after this Court issues its order regarding claim construction;
- All non-expert discovery shall be completed on or before 31 August 2001;
- All expert reports regarding issues for which a party carries the burden of proof shall be completed on or before 19 October 2001;

[Handwritten signature]

- All reply expert reports shall be completed on or before 19 November 2001.
- All expert discovery shall be completed on or before 21 December 2001.

IT IS SO ORDERED.


UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT
FOR THE NORTHERN DISTRICT OF OHIO

[Signature]
FILED
JUL 25 PM 4:14
NORTHERN DISTRICT OF OHIO

ROSENBLUTH, INC.,
Plaintiff

v.

TRAVEL ANALYTICS, INC.
Defendant

CIVIL ACTION NO.: 1:00 CV 0738-LAND

Judge Lesley Wells✓
Magistrate Judge Streepy

STIPULATED PROTECTIVE ORDER

On this date, came on for consideration by the Court the request of Plaintiff, Rosenbluth, Inc. and Defendant, Travel Analytics, Inc. (collectively the "parties") for the entry of this Stipulated Protective Order (the "Order"). The parties have announced, through the signature of their undersigned counsel of record, that they stipulate to the terms of this Order and to its entry by the Court. Accordingly, pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, the Court hereby orders as follows:

1. All CONFIDENTIAL INFORMATION, as defined in paragraph 2, shall be used solely for the purpose of this litigation and shall not be used for any other purpose or in any other action. Furthermore, CONFIDENTIAL INFORMATION shall not be disclosed to any person or entity except in accordance with the terms of this Order.

2. (a) "CONFIDENTIAL INFORMATION" as used herein, means information that is designated either "CONFIDENTIAL" or in restricted situations, "CONFIDENTIAL - ATTORNEY EYES ONLY," and all copies, notes, computer files, summaries, abstracts, or other recordings of such information. By way of example and not limitation, "CONFIDENTIAL INFORMATION" may include documents, information contained in a document, information revealed in a deposition or contained in a deposition transcript, or information contained in an

interrogatory answer or response to a Request for Admission. By way of example and not limitation, CONFIDENTIAL INFORMATION may relate to marketing, finances, sales, costs, pricing, profits, tax returns, non-public financial statements, software including source code and technical or developmental information, business or marketing plans, employment policies, customers or potential customers, internal operating procedures, processes, research, compilations of information stored in data bases, and the like.

(b) Information will not be deemed confidential and protected, and the parties shall use reasonable efforts to ensure that information is not designated as such, if the content or substance thereof:

(i) is at the time of production of disclosure, or substantially becomes, through no wrongful act or failure to act on the part of the receiving party, generally available to the relevant public through publication or otherwise; or

(ii) is already in the possession of the receiving party at the time of production; or

(iii) is disclosed to the receiving party by a third party without breach of an obligation of confidence to the producing party.

3. A party shall designate as "CONFIDENTIAL" only information that it reasonably believes in good faith constitutes or contains trade secrets, proprietary business or technical information, or other commercial information.

4. A party may designate as "CONFIDENTIAL - ATTORNEY EYES ONLY" only the following information: Travel Analytics' Tango software (including source code, object code and related technical documentation), Rosenbluth's DACODA software (including source

code, object code and related technical documentation), non-public financial information such as by way of example and not limitation amount of income, profits, losses, or expenditures.

5. A party's designation of confidential information as "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEY EYES ONLY" shall, without more, cause the designated information to become subject to the terms of this Order, and all information shall be protected, used, disclosed, and disposed of strictly in accordance with the provisions of this Order.

6. Any written information, such as a document, an interrogatory answer, or a response to a request for admission, may be designated "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS EYES ONLY" by marking such terms on the document. If such terms are marked on the face or first page of the document, then such designation shall apply to the entire document; if such terms are marked on individual pages of the document, then such designation shall apply only to the individual pages so marked. Upon request, a party that marks an entire document "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS EYES ONLY" shall specify which portions of the document constitute CONFIDENTIAL INFORMATION and which portions do not. In lieu of marking and producing the original of a document, a marked copy thereof may be produced, provided that the unmarked original is kept available by the producing party for inspection. In the event that a copy of a document is marked "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS EYES ONLY," but one or more copies of the same documents are produced without such a marking, the unmarked copies shall be treated as, and have the same designation as, the marked copy.

7. Unless designated otherwise at the deposition, all deposition transcripts and exhibits shall be treated as "CONFIDENTIAL - ATTORNEY EYES ONLY" for a period of fifteen (15) days after the parties receive the deposition transcripts from the court reporter.

Within fifteen (15) days following receipt of the deposition transcript, a deponent or party may designate deposition testimony, transcripts, or exhibits as "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEY EYES ONLY" by serving a written statement on the parties specifying the portions of the deposition transcript or exhibits so designated. A deponent or a party may designate deposition testimony, transcripts, or exhibits as "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEY EYES ONLY" by indicating on the record at the deposition the portions of the testimony or exhibits that are so designated. If a document marked "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS EYES ONLY" is used as an exhibit at a deposition, all deposition testimony concerning that document shall constitute CONFIDENTIAL INFORMATION and have the same designation as the document.

8. CONFIDENTIAL INFORMATION that is marked or designated "CONFIDENTIAL" may not be disclosed to any person other than the following:

- (a) Outside counsel of record for the parties to this litigation (and other lawyers and employees of their law firms);
- (b) Outside experts and consultants and their employees or clerical assistants who are retained by counsel of record or a party for the purpose of analyzing data, conducting studies or providing opinions to assist, in any way, in this litigation, and who execute an undertaking in the form attached hereto as Exhibit A; and
- (c) Officers, directors, or employees of the parties who are assisting in the preparation of this litigation and who execute an undertaking in the form attached hereto as Exhibit A.

Each party's counsel of record shall maintain all original undertakings executed by persons identified in paragraphs 8(b) and (c) above, who receive CONFIDENTIAL INFORMATION

from or through such counsel or the party it represents. The parties shall disclose to persons identified in paragraphs 8(b) and (c) above, only so much CONFIDENTIAL INFORMATION as is reasonably necessary, in the good faith opinion of the parties' outside counsel of record, to the performance of such person's function relating to this litigation.

9. CONFIDENTIAL INFORMATION that is marked or designated "CONFIDENTIAL - ATTORNEYS EYES ONLY" may only be disclosed to those persons identified in paragraphs 8(a) and (b) above. CONFIDENTIAL INFORMATION that is marked or designated "CONFIDENTIAL - ATTORNEYS EYES ONLY" may not be disclosed to any persons identified in paragraph 8(c) above.

10. Any person who has prior knowledge of CONFIDENTIAL INFORMATION that was not gained for purposes of this litigation may be examined as a witness at deposition or trial concerning such CONFIDENTIAL INFORMATION. Any such witness may be shown CONFIDENTIAL INFORMATION that appears on its face or from other documents or testimony to have been received from or communicated to that witness as a result of any prior contact or relationship with the party who designated such information as CONFIDENTIAL INFORMATION. However, no officer, director, or employee of a party (other than the designating party) shall be present at any portion of a deposition in which CONFIDENTIAL INFORMATION designated "CONFIDENTIAL - ATTORNEYS EYES ONLY" is so used.

11. CONFIDENTIAL INFORMATION submitted to the Court in connection with any filing or proceeding in this litigation shall be filed in accordance with Local Rule 5.2 of the United States District Court for the Northern District of Ohio.

12. In the event that any recipient of CONFIDENTIAL INFORMATION is subpoenaed or served with a request in another action seeking such CONFIDENTIAL

INFORMATION, such recipient shall provide prompt written notice to the party who designated the material as CONFIDENTIAL INFORMATION and shall object to its production. Nothing herein, however, shall be construed as requiring anyone covered by this Order to disobey any Court order, subject itself to any penalties for noncompliance with any order, or seek any relief from this Court.

13. There shall be no obligation to challenge a CONFIDENTIAL INFORMATION designation when made, and a failure to do so shall not preclude a subsequent challenge thereto. If any party objects to the designation of any material as CONFIDENTIAL INFORMATION, the parties shall try to dispose of such dispute in good faith on an informal basis. If the dispute cannot be resolved by agreement, either party may seek appropriate relief from this Court. The party designating the information as CONFIDENTIAL INFORMATION shall have the burden of establishing that it is entitled to such protection.

14. If a party inadvertently or unintentionally produces or discloses information that it could designate as CONFIDENTIAL INFORMATION without so marking or designating it under the terms of this Order, such party shall not be deemed to have waived thereby any claim of confidentiality, either as to the specific information disclosed or as to any other information relating thereto or on the same or related subject matter.

15. Nothing in this Order shall prevent a party from disclosing information that it designated as CONFIDENTIAL INFORMATION.

16. Nothing in this Order shall prevent any attorney identified in paragraph 8(a) above, from rendering advice to his or her client in connection with this litigation and, in the course thereof, referring to or relying upon his or her examination of CONFIDENTIAL INFORMATION; provided, however, that in rendering such advice and in otherwise

communicating with his or her client, such attorney shall not disclose the content of any CONFIDENTIAL INFORMATION marked "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS EYES ONLY" to any person who is not entitled to receive it under the terms of this Order. Except as provided in this paragraph 19, it is not the intent of the parties that an attorney or law firm that acquires knowledge of (or is given access to) CONFIDENTIAL INFORMATION pursuant to this Order should thereby be disqualified from other representations adverse to the producing party solely because of such knowledge (or access). The parties agree between themselves that their respective counsel, inside and retained, as well as their employees, who are privy to CONFIDENTIAL INFORMATION produced by an opposing party which is of the type that can be included in a patent application and form the basis for a patent claim or claims are restricted from prosecuting, supervising or assisting in the prosecution of any patent application on behalf of their respective party clients in this lawsuit or any entity related to such party clients pertaining to the subject matter of the patent-in-suit during the pendency of this case and for one year after the conclusion of this litigation, including any appeals.

17. Information provided by a non-party also may be designated as CONFIDENTIAL INFORMATION either by such non-party or by a party, in which event such information shall become subject to all terms of this Order.

18. In the event that a party wishes to remove the "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS EYES ONLY" mark from the face of a document prior to showing such document to a jury in this litigation, the parties shall try in good faith to reach agreement concerning such request. If the request cannot be resolved by agreement, either party may seek such relief from this Court.

19. If a party inadvertently or unintentionally produces or discloses a document in this litigation that arguably is subject to the attorney-client or attorney work product privileges, such production or disclosure shall not constitute a waiver of any such privilege.

20. Within thirty days after the final conclusion of this litigation, each party shall, without demand, retrieve all CONFIDENTIAL INFORMATION originally designated by the other party and all copies thereof, from all persons to whom the party has disclosed it. Within such thirty day period, each person who has received CONFIDENTIAL INFORMATION or copies thereof shall, without demand, return it to the party from whom he or she received it. Within such thirty day period, each party shall, without demand, either destroy all CONFIDENTIAL INFORMATION and all copies thereof or return it to the counsel of record for the party who originally so designated it, except that the outside counsel of record for each party in this litigation may retain (1) one copy of each deposition transcript; (2) one copy of each item filed with the Court and each discovery response; and (3) any documents in its correspondence or other official firm files for this litigation that the firm as a normal practice would retain. Finally, within such thirty day period, each party shall forward to the other party copies of all undertakings executed by all persons who received CONFIDENTIAL INFORMATION pursuant to paragraphs 8 and 9 above, together with a written certification of compliance with this paragraph signed by each such person.

21. This Order shall survive the final conclusion of this litigation and continue in full force and effect, and the Court shall retain jurisdiction to enforce this Order.

22. This Order is without prejudice to the right of any party to seek additional protection pursuant to Fed. R. Civ. P. 26(c) or additional orders concerning the treatment of

information or documents. This Order may be modified or amended by written agreement of the parties or by further order of the Court for good cause shown.

23. Any notice required or permitted to be given under this Order shall be given by mail, hand delivery or telecopy to the parties' counsel of record located in Cleveland, Ohio, and Philadelphia, Pennsylvania, respectively.

SO ORDERED this 20 day of July, 2001.

118707

AGREED AND STIPULATED:

Dated: 7-16-01

Dated: 7/18/01

Joel S. Goldhammer
Joel S. Goldhammer, Esquire
AKIN, GUMP, STRAUSS, HAUER & FELD, L.L.P.
One Commerce Square
2005 Market Street - 22nd Floor
Philadelphia, PA 19103
Phone: 215-965-1260
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Thomas H. Shunk, Esquire
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3200 National City Center
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Counsel for Plaintiff,
Rosenbluth, Inc.

Michael J. Garvin
Michael J. Garvin, Esquire
HAHN LOESER PARKS LLP
3300 BP Tower
200 Public Square
Cleveland, OH 44114-2301
Phone: 216-274-2322
Fax: 216-274-2422

Counsel for Defendant,
Travel Analytics, Inc.

[Handwritten signature]

FILED

01 AUG 10 AM 11:31

NORTHERN DISTRICT OF OHIO
CLEVELAND

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROSENBLUTH INTERNATIONAL, INC.,	)	CASE NO. 1: 00 CV 738
)	
Plaintiff,	)	JUDGE LESLEY WELLS
)	
-vs-)	
)	
TRAVEL ANALYTICS, INC.,	)	<u>ORDER GRANTING MOTION TO</u>
	)	<u>SUSPEND PRETRIAL DEADLINES</u>
	)	<u>PENDING SETTLEMENT AND</u>
Defendant.	)	<u>REFERRING CASE TO MEDIATION</u>
)	

This case is before the court on a joint motion by the parties to suspend the existing pretrial deadlines for a maximum of 60 days pending settlement negotiations.

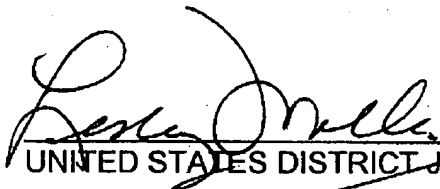
Upon consideration, the motion is granted. Existing pretrial deadlines shall be suspending for a period not to exceed 60 days pending settlement negotiations. Parties shall report to the Court no later than 60 days from the date of this order and inform the Court as to whether settlement has been reached. Any party may move to reinstate pretrial deadlines prior to the expiration of the 60-day period should that party believe further settlement negotiations are not likely to be productive.

Issued KA

The parties also requested the Court refer this matter to mediation to further aid settlement discussions. Pursuant to Rule 16.6 of the Local Rules of the United States District Court for the Northern District of Ohio, this case is referred to mediation.

A copy of this Order will be forwarded forthwith to the ADR Administrator for implementation.

IT IS SO ORDERED.


UNITED STATES DISTRICT JUDGE

FILED

01 OCT 25 PM 3:02

CLERK OF COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROSENBLUTH INTERNATIONAL, INC.	)	CASE NO. 1:00 CV 738
)	
Plaintiff)	
	)	JUDGE LESLEY WELLS
-VS-)	
)	
TRAVEL ANALYTICS, INC.	)	<u>ORDER REGARDING DEADLINES</u>
)	
Defendant)	

On 18 October 2001, the parties filed a joint status report and request for resetting of pretrial deadlines. (Docket No. 61). The parties present several recommended deadlines, on which they have agreed.

Extensions have already been granted in this case. On 19 June 2001, the Court granted a motion for extension of time for discovery and dispositive motions. (Docket No. 54). On 10 August 2001, the Court suspended pretrial deadlines for sixty days pending mediation. (Docket No. 60). Moreover, the latest request for an extension itself was filed nine days after the deadline established by the 10 August order.


Despite these delays, the Court will extend deadlines one more time in this case. The Court adopts the recommendations of the parties. Fact and damage discovery is

[Handwritten signature]

to be completed by 28 February 2002. The deadline for expert reports on any matter on which a party has the burden of proof is 28 February 2002. The deadline for expert reports in opposition to any expert report submitted is 15 April 2002. All expert discovery is to be completed by 15 May 2002. The dispositive motion deadline is 31 May 2002.

The parties must comply with these new deadlines. No further extensions will be granted.

IT IS SO ORDERED.


UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROSENBLUTH INTERNATIONAL, INC.	)	CASE NO. 1:00 CV 738
)	
Plaintiff	)	JUDGE LESLEY WELLS
)	
-vs-)	
	)	<u>ORDER REFERRING CASE TO</u>
TRAVEL ANALYTICS, INC.	)	<u>MAGISTRATE JUDGE STREEPY</u>
	)	<u>REGARDING DISCOVERY DISPUTE</u>
Defendant)	

On 7 December 2001, this Court referred a discovery dispute to United States Magistrate Judge Jack B. Streepy for resolution. (Docket No. 73). After the referral, additional discovery disputes were certified to the Court by a notice filed by plaintiff pursuant to Local Civil Rule 37.1. (Docket No. 74).

This case is referred to Magistrate Judge Streepy for the limited purpose of resolving these discovery disputes pursuant to the procedures of Local Civil Rule 37.1.

IT IS SO ORDERED.

/s/ Lesley Wells
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROSENBLUTH INTERNATIONAL, INC.	)	CASE NO. 1:00 CV 738
)	
Plaintiff	)	JUDGE LESLEY WELLS
)	
-vs-)	
)	
TRAVEL ANALYTICS, INC.	)	ORDER REFERRING CASE TO
	)	<u>MAGISTRATE JUDGE STREEPY</u>
	)	<u>REGARDING DISCOVERY DISPUTE</u>
Defendant)	

A discovery dispute has been certified to the Court by a notice filed by defendant pursuant to Local Civil Rule 37.1. (Docket No. 72).

This case is referred to United States Magistrate Judge Jack B. Streepy for the limited purpose of resolving the discovery dispute pursuant to the procedures of Local Civil Rule 37.1.

IT IS SO ORDERED.

/s/ Lesley Wells
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT
FOR THE NORTHERN DISTRICT OF OHIO

ROSENBLUTH INTERNATIONAL, INC.,
Plaintiff

v.

TRAVEL ANALYTICS, INC.
Defendant

CIVIL ACTION NO.: 1:00 CV 0738

Judge Lesley Wells
Magistrate Judge Streepy

**PROPOSED ORDER PERMITTING
AMENDMENT TO PLAINTIFF'S
REPLY TO DEFENDANT TRAVEL
ANALYTICS' COUNTERCLAIMS**

This Court having considered Plaintiff, Rosenbluth International's, Unopposed Motion
For Leave To File Amended Reply To Counterclaim:

It is ORDERED:

1. Leave is granted to the plaintiff to file its Amended Reply
2. Plaintiff shall serve and file the Amended Reply within ten (10) days of the date
of this Order.

Dated: *16 December*
2007


U.S.D.J.

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CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROSENBLUTH INTERNATIONAL,
INC.

Plaintiff

v.

TRAVEL ANALYTICS, INC.

Defendant

1:00CV738

JUDGE LESLEY WELLS
(Magistrate Judge Jack B. Streepy)

01 DEC 31 AM 10:30

ORDER

STREEPY, MAG. J.

Defendant's objection to interrogatory 5 is sustained. The interrogatory is partially redundant when compared to the other similar interrogatories that were answered. Concerning that portion of interrogatory 5 which is not redundant, said portion is not reasonably calculated to lead to a discovery of admissible evidence.

IT IS SO ORDERED.

Dated: January 2, 2002

Jack B. Streepy
United States Magistrate Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROSENBLUTH INTERNATIONAL,)
INC.)

1:00CV738

Plaintiff)

JUDGE LESLEY WELLS

v.)

(Magistrate Judge Jack B. Streepy)

TRAVEL ANALYTICS, INC.)

Defendant)

ORDER

STREEPY, MAG. J.

The parties shall jointly submit a report on or before January 28, 2002 as to whether there are any further discovery disputes from the certifications on December 4, 2001 (doc. 72) and December 12, 2001 (doc. 74).

IT IS SO ORDERED.

Dated: 16 January 2002

/s/ Jack B. Streepy

Jack B. Streepy
United States Magistrate Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROSENBLUTH INTERNATIONAL,	)	1:00CV738
INC.)	
)	
Plaintiffs	)	JUDGE LESLEY WELLS
	)	(Magistrate Judge Jack B. Streepy)
v.)	
)	
TRAVEL ANALYTICS, INC.)	
)	
Defendant)	

ORDER

STREEPY, MAG. J.

The above matter was referred by the court for a report and recommended decision, a pretrial hearing, or other preliminary matters. This matter has now been concluded, therefore;

IT IS ORDERED that the case referral order is hereby terminated, and the case is returned to the referring judge.

Dated: 1 Feb 2002

/s/Jack B. Streepy
Jack B. Streepy
United States Magistrate Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROSENBLUTH INTERNATIONAL, INC.	)	CASE NO. 1:00 CV 738
)	
Plaintiff	)	JUDGE LESLEY WELLS
)	
-vs-)	
)	
TRAVEL ANALYTICS, INC.	)	<u>ORDER REFERRING CASE TO</u>
	)	<u>MAGISTRATE JUDGE STREEPY</u>
	)	<u>REGARDING DISCOVERY DISPUTE</u>
Defendant)	

A discovery dispute has been certified to the Court by a notice filed by defendant pursuant to Local Civil Rule 37.1. (Docket No. 87).

This case is referred to United States Magistrate Judge Jack B. Streepy for the limited purpose of resolving the discovery dispute pursuant to the procedures of Local Civil Rule 37.1.

IT IS SO ORDERED.

/s/ Lesley Wells
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROSENBLUTH INTERNATIONAL,)	1:00CV738
INC.)	
Plaintiff)	JUDGE LESLEY WELLS
v.)	(Magistrate Judge Jack B. Streepy)
TRAVEL ANALYTICS, INC.)	
Defendant)	

ORDER

STREEPY, MAG. J.

One of the current motions in this case was previously referred for a report and recommendation concerning, i.e., plaintiff's motion for an adverse adjudication on plaintiff's patent infringement complaint and to dismiss defendant's counterclaim for patent invalidity (doc. 68).

Subsequently, plaintiff filed a motion for summary judgment on defendant's counterclaims (doc. 98). The parties shall file a joint statement setting forth the impact of that motion on plaintiff's earlier motion. That statement shall be filed on or before July 8, 2002.

IT IS SO ORDERED.

Dated: 21 June 2002

/s/ Jack B. Streepy
Jack B. Streepy
United States Magistrate Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROSENBLUTH INTERNATIONAL, INC.	)	CASE NO. 1:00CV738
)	
Plaintiff)	
)	
-vs-	)	JUDGE LESLEY WELLS
)	
TRAVEL ANALYTICS, INC.	)	<u>ORDER OF REFERRAL FOR REPORT</u>
	)	<u>AND RECOMMENDATION</u>
Defendant)	

Plaintiff Rosenbluth International, Inc. has filed a Motion for Summary Judgment on Defendant's Counterclaims. [Docket # 98]. Defendant Travel Analytics, Inc. has filed a Motion for Attorney Fees and Expenses. [Docket #127]. This matter is referred to United States Magistrate Judge Jack B. Streepy pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 72.1. Magistrate Judge Streepy shall consider the motions and shall file a report and recommendation for their disposition.

IT IS SO ORDERED.

/s/ Lesley Wells
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROSENBLUTH INTERNATIONAL,	)	1:00CV738
INC.)	
)	
Plaintiff	)	JUDGE LESLEY WELLS
	)	(Magistrate Judge Jack B. Streepy)
v.)	
)	
TRAVEL ANALYTICS, INC.)	
)	
Defendant)	

ORDER

STREEPY, MAG. J.

The above matter was referred by the court for a report and recommended decision, a pretrial hearing, or other preliminary matters. This matter has now been concluded, therefore;

IT IS ORDERED that the case referral order is hereby terminated, and the case is returned to the referring judge.

Dated: 11 Sep 2002

/s/Jack B. Streepy
Jack B. Streepy
United States Magistrate Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROSENBLUTH INTERNATIONAL, INC.	)	CASE NO. 1:00 CV 738
)	
Plaintiff)	
	)	JUDGE LESLEY WELLS
-vs-)	
)	
TRAVEL ANALYTICS, INC.	)	<u>ORDER REGARDING PROCEDURAL</u>
	)	<u>MOTIONS</u>
Defendant)	

Before the Court are three procedural motions. The first is defendant's motion to unseal its summary judgment opposition brief. (Docket # 135). A response and reply were filed. (Docket # 139, 145). After reviewing the 41 pages of briefing on this minor issue, the Court is persuaded that the brief includes material covered by the Stipulated Protective Order of 25 July 2001. (Docket # 60). The motion to unseal the opposition brief is denied.

The next motion is plaintiff's motion for leave to file a sur-reply regarding defendant's motion for attorney fees and expenses. (Docket # 141). In its response, defendant states that it does not object to the filing of a sur-reply. (Docket # 146). The motion is granted. When the Court reviews the substantive motions and Magistrate Judge Streepy's Report and Recommendation, the Court will consider plaintiff's

sur-reply, which was filed on 10 July 2002. (Docket # 143).

Finally, there is defendant's motion for oral argument on the pending objections to the Report and Recommendation. (Docket # 154). A response was filed. (Docket # 155). As oral argument is unnecessary for the Court to rule on the pending substantive motions, the motion for oral argument is denied.

IT IS SO ORDERED.

/s/ Lesley Wells
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
03 APR 18 AM 8:06
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

ROSENBLUTH INTERNATIONAL, INC.) CASE NO. 1:00 CV 738
Plaintiff)
-vs-) JUDGE LESLEY WELLS
TRAVEL ANALYTICS, INC.) ORDER
Defendant)

With the concurrence of the receiving Judge and with the approval of the Chief Judge, the above captioned case is hereby transferred to the docket of Chief Judge Paul R. Matia.

IT IS SO ORDERED.


UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROSENBLUTH INTERNATIONAL, INC.,	)	JUDGE PAUL R. MATIA
)	
Plaintiff	)	CASE NO. 1:00CV0738
)	
-vs-)	
	)	<u>ORDER</u>
TRAVEL ANALYTICS, INC.,)	
)	
Defendant)	

Plaintiff Rosenbluth International, Inc. filed a complaint in this court against defendant Travel Analytics, Inc. alleging patent infringement of Rosenbluth's U.S. Patent No. 5,832,453.

Travel Analytics filed a second amended answer with an affirmative defense of invalidity of the patent and a counterclaim raising five causes of action against Rosenbluth:

(1) for a declaratory judgment of noninfringement; (2) for a declaratory judgment of invalidity; (3) for commercial disparagement and defamation; (4) for intentional interference with business relations; and (5) for unfair competition.

Counterclaim causes (3), (4) and (5) are state law claims.

Three motions are involved in this particular ruling.

Because of a prior Markman ruling by the Court construing Patent No. 5,832,453, plaintiff Rosenbluth concedes that its patent infringement claim cannot succeed, and therefore it has moved the

Court to enter judgment in favor of defendant Travel Analytics on the patent infringement claim. As part of this motion, plaintiff Rosenbluth seeks dismissal of defendant's counterclaims for patent invalidity. Plaintiff has also moved for summary judgment on all of the other counterclaim causes of action except the one seeking a declaratory judgment of noninfringement. Finally, defendant Travel Analytics has moved for attorney fees and expenses.

These matters were referred to a Magistrate Judge for a report and recommendation, which was issued on September 11, 2002. Both parties filed objections. This Court has considered the matter *de novo* in response to the objections and each side's response thereto. Accordingly, the Court issues the following ruling.

I.

Rosenbluth has asked the Court to enter judgment in favor of Travel Analytics on Rosenbluth's patent infringement claim. Travel Analytics has not objected to the magistrate judge's recommendation that this be done. Although the magistrate judge recommended that this judgment not be entered at this time, the Court respectfully disagrees and orders final judgment entered in favor of defendant on plaintiff's patent infringement claim. It

necessarily follows that summary judgment should be granted to defendant on its first counterclaim for a declaratory judgment of noninfringement.

II.

With respect to plaintiff's motion for dismissal of defendant's counterclaim for patent invalidity, the magistrate judge recommended that the issue of the patent's validity be preserved for trial. Plaintiff objected to that recommendation. Upon consideration of all of the factors involved, the Court will sustain the plaintiff's objection and will dismiss as moot the defendant's counterclaim for a declaration of patent invalidity.

Phonometrics, Inc. v. Northern Telecom, Inc., 133 F.3d 1459 (Fed. Cir. 1998).

III.

The magistrate judge recommended that summary judgment be granted in favor of plaintiff on defendant's counterclaims for commercial disparagement and defamation and for intentional interference with business relations. Neither party has objected to this recommendation. Therefore the Court adopts it as its own.

IV.

Defendant Travel Analytics has objected to the magistrate judge's recommendation that summary judgment be granted in favor of plaintiff on defendant's counterclaim for unfair competition. The objection is based on the contention that there are genuine issues of material fact that must be decided by a jury. This is a state cause of action. All federal claims have been resolved by the Court's rulings. Therefore the Court will exercise its discretion to decline to hear the remaining pendant state claim, and it will be dismissed without prejudice. 28 U.S.C. § 1367(c)(3); United Mine Workers v. Gibbs, 383 U.S. 715 (1966).

V.

Travel Analytic's motion for attorney fees and expenses remains pending. The magistrate judge declined to rule on it because in light of his recommendation with respect to the issue of patent invalidity, it could not be determined whether Travel Analytics was a prevailing party. Since this Court's rulings have considerably changed the posture of this case, the Court will defer ruling on the motion to afford the appropriate parties an opportunity to either withdraw the motion or (if they choose) to submit supplemental briefs, all of which must occur on or before June 16, 2003.

IT IS SO ORDERED.

s/ PAUL R. MATIA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

CERTIFICATE OF SERVICE

A copy of the foregoing Trial Order was filed electronically this 29th day of May, 2003. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system. A copy of this Order has also been sent by regular mail this 29th day of May, 2003 to Joel Goldhammer, 22nd Floor, One Commere Square, 2005 Market Street, Philadelphia, PA 19103; Jordan A. LaVine, One Commerce Square, 22nd Floor, 2005 Market Street, Philadelphia, PA 19103; and Grant S. Palmer, One Logan Square, Philadelphia, PA 19103-6998.

/s/ PAUL R. MATIA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROSENBLUTH INTERNATIONAL, INC.	)	JUDGE PAUL R. MATIA
)	
Plaintiff	)	CASE NO. 1:00CV0738
)	
-vs-)	
	)	<u>JUDGMENT ENTRY</u>
TRAVEL ANALYTICS, INC.)	
)	
Defendants)	

Pursuant to this Court's Order filed May 29, 2003,

It is ordered that the Report and Recommendation of the Magistrate Judge is affirmed in part and rejected in part. Defendant's motion for summary judgment is granted as to plaintiff's patent infringement claim and on its first counterclaim for declaratory judgment of noninfringement upon the ground that there is no genuine issue as to any material fact. Judgment is for the defendant as a matter of law as to these claims. Defendants counterclaim for declaratory judgment of invalidity is dismissed as moot.

Plaintiff's motion for summary judgment is granted as to defendant's counterclaims for commercial disparagement, defamation, and intentional interference with business relations upon the ground that there is no genuine issue as to any material fact. Judgment is for the plaintiff as a matter of law as to these claims. Defendant's counterclaim for unfair competition

is dismissed without prejudice pursuant to 28 U.S.C. § 1367(c)(3).

IT IS SO ORDERED.

S/ Paul R. Matia
JUDGE PAUL R. MATIA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

CERTIFICATE OF SERVICE

A copy of this Judgment Entry was filed electronically this 30th day of May, 2003. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

s/ Paul R. Matia
JUDGE PAUL R. MATIA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROSENBLUTH INTERNATIONAL, INC.)	JUDGE PAUL R. MATIA
)	
Plaintiff)	CASE NO. 1:00CV0738
)	
-vs-)	
)	
TRAVEL ANALYTICS, INC.)	<u>MEMORANDUM OF OPINION</u>
)	<u>AND ORDER</u>
Defendant)	

On May 29, 2003, the Court entered final judgment for defendant Travel Analytics, Inc., (Travel) on plaintiff Rosenbluth International Inc.'s (Rosenbluth) patent infringement claim after Rosenbluth conceded that its patent infringement claim could not succeed because of the Court's prior *Markman* ruling. Summary judgment was granted in favor of Travel on its first counterclaim for declaratory judgment of noninfringement. Travel's counterclaim for patent invalidity was dismissed as moot, *Phonometrics, Inc. v. Northern Telecom, Inc.*, 133 F.3d 1459 (Fed Cir. 1998), and summary judgment was granted for Rosenbluth on Travel's counterclaims for commercial disparagement, defamation, and interference with business relations. The Court gave Travel the opportunity to proceed on its motion for attorney fees and expenses by submitting

a supplemental brief. Travel decided to proceed on this issue and this matter is now before the Court. (ECF 127).

Rosenbluth argues that Travel is not entitled to attorney fees because it was not a prevailing party since it did not receive a favorable ruling on its invalidity counterclaim. *Roane v. City Mansfield*, 2000 WL 1276745 (6th Cir. Aug. 28, 2000), a civil rights case, was cited wherein the court held that the defendant was not a prevailing party and thus was not entitled to attorney fees where the plaintiff voluntarily dismissed its complaint with prejudice. Rosenbluth asserts that Travel did not receive a favorable ruling on the merits. The Supreme Court determined that the same policy considerations for awarding attorney fees to a plaintiff were not present in the case of a prevailing civil rights defendant. *Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 523 (1994). Furthermore, the Court ruled that the fee shifting statutes in the patent and trademark fields are more closely related to that of copyright. *Id.*, 510 U.S. at 525 n. 12; *Roane v. City of Mansfield*, 2000 WL 1276745 at *2.

In *Encomp, Inc. L-com, Inc.*, 999 F. Supp. 264, 266 (D. Conn. 1998), the plaintiff voluntarily dismissed its patent infringement claim with prejudice. Defendant's counterclaims for patent invalidity, unenforceability and noninfringement were also dismissed with prejudice. The court found that defendants who

have obtained a voluntary dismissal with prejudice are considered prevailing parties in patent infringement cases if there is a determination that the action was brought in bad faith under § 285. *Id.*

Travel should be considered a prevailing party because it obtained final judgment on Rosenbluth's patent infringement claim and on its counterclaim for declaratory judgment of noninfringement. Rosenbluth dismissed its complaint after a contested *Markman* hearing that resulted in an unfavorable ruling. After the *Markman* hearing, Rosenbluth realized it could not prevail on its patent infringement claim.

The prevailing party in a patent case can obtain attorney fees under 35 U.S.C. § 285. That section states: "[t]he court in exceptional cases may award reasonable attorney fees to the prevailing party." The party seeking attorney fees must show by clear and convincing evidence that the case is exceptional. *Reactive Metals and Alloys Corp. v. ESM, Inc.*, 769 F.2d 1578, 1582 (Fed. Cir. 1985); *Seal-Flex, Inc. v. W.R. Dougherty and Associates*, 254 F. Supp.2d 647, 659 (E.D. Mich. 2003). A "prevailing party may prove the existence of an exceptional case by showing: inequitable conduct before the PTO; litigation misconduct; vexatious, unjustified, and otherwise bad faith litigation; a frivolous suit or willful infringement." *Waner v.*

Ford Motor Co., 331 F.3d 851, 857 (Fed. Cir. 2003), quoting *Epcon Gas Systems, Inc. v. Bauer Compressors, Inc.*, 279 F.3d 1022, 1034 (Fed. Cir. 2002). . . . Litigation misconduct and unprofessional behavior, by themselves, may constitute an exceptional case. *Id.*

Travel argues that Rosenbluth did not have a good faith basis for initiating the patent infringement lawsuit. Before filing this case Rosenbluth allegedly had evidence that Travel's product, TANGO, did not infringe its patent. Travel presents the following reasons that it claims supports a conclusion that there is clear and convincing evidence of bad faith on the part of Rosenbluth: (1) Rosenbluth perceived Travel and TANGO as a threat to its DACODA product and to its secretive and controversial override arrangements with the airlines; (2) Rosenbluth had no evidence that TANGO infringed the '453 patent and ignored evidence to the contrary; (3) Rosenbluth did not sue WTP over its APM product despite the evidence Rosenbluth had that APM was functionally identical to TANGO - the difference being that WTP, like Rosenbluth, is a major corporate travel agency also certainly dependent upon override revenues; (4) Rosenbluth filed its suit without notice and without waiting for Travel's patent counsel to review file history (that Rosenbluth had delayed providing for six weeks) and respond with information concerning TANGO (that Rosenbluth had requested); and (5) in all likelihood, Rosenbluth

filed suit in order to be on record before a major industry conference at which Rosenbluth and Travel's strategic partner Maritz would be discussing airline negotiations.

Rosenbluth imparts that several people were involved in the analysis of whether or not TANGO was infringing on Rosenbluth's intellectual property, including outside counsel. Attorney Joel S. Goldhammer stated in his declaration that all publicly available information was reviewed. He attempted to obtain additional information from Travel. On November 15, 1999, he wrote to Travel advising that it appeared that the TANGO software may employ a system or process covered by Rosenbluth's patent and requested a response within 5 days. Seven days later patent counsel for Travel responded asking for more time to study the patent in question. Several months later Travel's counsel indicated they were unable to locate the file history of the patent, so Goldhammer provided a copy in February 2000. No further information was received from Travel. Rosenbluth's counsel conducted a full investigation on the facts available at the time, as well as Travel's website and other communication from Travel and concluded that there was evidence of infringement. Suit was filed on March 17, 2000.¹

¹ The e-mail message that Travel sent to a prospective customer comparing the two companies' software may or may not have been received by Rosenbluth's counsel.

The Court concludes that Travel has not shown by clear and convincing evidence that it is entitled to attorney fees. Travel was given an opportunity to review and respond to Rosenbluth's inquiry about TANGO. As a result of not receiving a response, Rosenbluth filed suit against Travel. Travel's statement that the filing of the suit was timed to coincide with a major industry conference is mere conjecture. If in fact, as Rosenbluth may have believed, Travel was infringing on Rosenbluth's product it would be reasonable to get this information to its competitors and customers. Rosenbluth obtained advice from outside counsel before commencing this action. Furthermore, Rosenbluth received a favorable ruling on Travel's counterclaims for commercial disparagement, defamation, and interference with business relations.

28 U.S.C § 285 covers only attorney fees in patent cases. There is no mention in that statute about costs which are available under 28 U.S.C. § 1920 or Fed. R. Civ. P. 54(d). Travel has not moved for costs under the United States Code or Federal Rules of Civil Procedure. It may be entitled to costs but there is no discussion in this regard.

Accordingly, for the foregoing reason, Travel's motion for attorney fees under 35 U.S.C. § 285 is denied. Costs are denied at this time. (ECF 127).

IT IS SO ORDERED.

s/ Paul R. Matia
JUDGE PAUL R. MATIA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

CERTIFICATE OF SERVICE

A copy of this Memorandum of Opinion and Order was filed electronically this 8th day of September, 2003. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

s/ Paul R. Matia
JUDGE PAUL R. MATIA
CHIEF JUDGE
UNITED STATES DISTRICT COURT